

IN THE COURT OF APPEALS OF TENNESSEE  
AT NASHVILLE  
May 23, 2006 Session

**MOZELLE SMITH v. RAYMOND BOWMAN**

**Appeal from the Juvenile Court for Davidson County**  
**No. 07-77-76 Betty Adams Green, Judge**

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**No. M2005-01384-COA-R3-JV - Filed on July 23, 2007**

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This appeal involves a biological father's obligation to pay child support for a non-marital child who has now reached the age of majority. During her youth, the child lived with each parent at different times, and even though the issues of custody and support were before the Davidson County Juvenile Court, they were never fully or finally resolved. Three weeks before the child's eighteenth birthday, the mother filed a petition in the juvenile court seeking to change custody and to recover retroactive child support. A referee granted the mother a \$25,200.50 judgment against the father, but the juvenile judge set the judgment aside and dismissed the mother's petition. The mother appealed. We have determined that the father is liable only for the child support that accrued after the mother filed her petition seeking to change custody and to recover child support.

**Tenn. R. App. P. 3 Appeal as of Right; Judgment of the Juvenile Court Affirmed in Part;  
Vacated in Part; and Remanded**

WILLIAM C. KOCH, JR., P.J., M.S., delivered the opinion of the court, in which WILLIAM B. CAIN and PATRICIA J. COTTRELL, JJ., joined.

Charles G. Blackard, III and Barry L. Gardner, Brentwood, Tennessee, for the appellant, Mozelle Smith.

Rosemary E. Phillips, Goodlettsville, Tennessee, for the appellee, Raymond Bowman.

**OPINION**

**I.**

On March 25, 1986, Mozelle Hudson Smith gave birth out-of-wedlock to Celia Bowman. The child's biological father is Raymond Bowman. While the record contains little information regarding the parents or the child, Ms. Smith apparently became the primary custodial parent. Sometime in late 1989 or early 1990, Ms. Smith filed a paternity petition in the Davidson County Juvenile Court seeking to establish Mr. Bowman as the child's father and to require him to pay child support. Mr. Bowman responded by filing a petition to legitimate his daughter. Following a hearing, a juvenile court referee entered an order on March 29, 1990, declaring Mr. Bowman to be Celia

Bowman's biological father, ordering him to pay \$328.44 per month in child support, and establishing his visitation rights.

In August 1996, Celia Bowman told her father that Ms. Smith had physically abused her as punishment for the fact that Celia Bowman had been baptized in Mr. Bowman's church. On August 7, 1996, Mr. Bowman filed a petition in the juvenile court seeking custody of his daughter. On August 15, 1996, another juvenile court referee entered an order placing Celia Bowman in her father's custody "pending further hearing in this cause." The referee also ordered the parents to participate in "a minimum of six (6) therapy sessions before this matter may be set for trial in an effort to work out the conflicts between them." The order also explicitly "suspended" Mr. Bowman's obligation to pay child support after August 1996.

The record contains little evidence regarding what happened for the next eight years. The parties and the child attended counseling sessions between October 1996 and January 1997, and the counseling service provided an inconclusive and ambivalent report in May 1997. The sketchy information in the various referees' orders indicates that Celia Bowman resided primarily with Mr. Bowman between August 1996 and August 1997, although Ms. Smith asserts that the child spent extended periods with her when Mr. Bowman was traveling on business. The parties apparently divided custody equally between August 1997 and August 1999, and after August 1999, Celia Bowman lived primarily with Ms. Smith.<sup>1</sup>

On March 4, 2004, three weeks before Celia Bowman's eighteenth birthday, Ms. Smith filed a petition in the juvenile court requesting a change of custody and an order requiring Mr. Bowman to pay child support in the "amount of accumulated arrears since the time the minor child has been in her physical possession." The referee who heard the matter on April 8, 2004, declined to act on Ms. Smith's petition because she had failed to provide information regarding the residence of the child since 1997 and had failed to present evidence regarding the child's medical bills, insurance costs, and current medical needs.

The referee conducted another hearing on June 15, 2004. On this occasion, the referee dismissed the portion of Ms. Smith's petition seeking a change of custody because Celia Bowman was no longer a minor. The referee also determined the child's residential arrangements between August 1996 and May 2004 and set another hearing to determine the amount of child support to which the mother was entitled. Following a hearing on September 2, 2004, the referee determined that Mr. Bowman was entitled to receive \$5,198.00 in child support for the period from August 1996 to August 1997 when Celia Bowman was residing primarily with him. The referee also determined that Mr. Bowman owed Ms. Smith \$10,811.50 in support for the four and one-half years after August 1999 that the child was residing with her. After another hearing, the referee entered yet another

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<sup>1</sup> Contrary to the findings in the juvenile referee's October 20, 2004 order, Ms. Smith insists that Celia Bowman lived with her full-time after March 1997. The record contains no evidence to support this assertion.

order on December 28, 2004 granting Ms. Smith a \$5,613.50 judgment against Mr. Bowman for retroactive child support.<sup>2</sup>

Ms. Smith filed a motion to alter or amend the December 28, 2004 order on the ground that Mr. Bowman's testimony regarding his income and his expenditures for the child had not been truthful. Following a hearing on February 3, 2005, the referee entered an order on March 21, 2005, finding that Mr. Bowman had indeed "not provide[ed] accurate income information at prior hearings" and that his actual average monthly income was \$3,152 per month. Accordingly, the referee determined that Mr. Bowman's child support obligation was \$527 per month. Using these figures, the referee determined that Mr. Bowman owed Ms. Smith fifty-eight months of "total back child support." After deducting the amount of the child support that Ms. Smith owed Mr. Bowman and a small credit for "necessary support" Mr. Bowman had provided, the referee awarded Ms. Smith a judgment against Mr. Bowman for \$25,200.50 in child support and \$3,092.50 in attorney's fees.

Mr. Bowman requested the juvenile judge to rehear the matter because the referee had overlooked the fact that he had "legal custody" of Celia Bowman since she was in the fifth grade and because the referee had given him no credit for paying the child's expenses. The juvenile judge heard the matter on April 14, 2005. In an order filed on May 19, 2005, the juvenile judge determined that the referee's August 15, 1996<sup>3</sup> order was a final order. The juvenile court reasoned that the August 15, 1996 order was not appealed and that "[t]he burden was on the mother to have child support reinstated which she failed to do." Therefore, the court declined to "go behind" the August 15, 1996 order. Accordingly, the juvenile court dismissed the mother's petition for change of custody and to establish a child support arrearage. Ms. Smith has appealed from the juvenile judge's May 19, 2005 order.

## II.

Parents have "deeply rooted moral responsibilities" to support their minor children. *Boggs v. Boggs*, 520 U.S. 833, 847, 117 S. Ct. 1754, 1764 (1997) (quoting *Rose v. Rose*, 481 U.S. 619, 632, 107 S. Ct. 2029, 2037 (1987)); *State Dep't of Human Servs. ex rel. Young v. Young*, 802 S.W.2d 594, 600 (Tenn. 1990); *Baker v. Baker*, 169 Tenn. 589, 592, 89 S.W.2d 763, 764 (1935). In addition to their moral responsibility, Tennessee law imposes a legal obligation on parents to support their children until they reach the age of majority in a manner commensurate with the parents' own means and station in life. Tenn. Code Ann. § 34-1-102(a), (b) (2001); *Smith v. Gore*, 728 S.W.2d 738, 750 (Tenn. 1987).

Once a court determines that a man is a child's biological father, it must address not only the child's need for future support, but it must also determine whether the father should be required to

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<sup>2</sup> \$10,811.50 - \$5,198.00 = \$5,613.50.

<sup>3</sup> The juvenile court referred to this order as the "August 9, 1996 order." While the referee conducted the hearing on August 9, 1996, the order was not entered until August 15, 1996. Accordingly, we will refer to the order as the "August 15, 1996 order."

pay retroactive support from the date of the child's birth. *State ex rel. Coleman v. Clay*, 805 S.W.2d 752, 755 (Tenn. 1991). Awards for retroactive child support provide reimbursement for a parent's expenditures during the time that he or she alone was fulfilling the joint parental duty to support. *State ex rel. Vaughn v. Kaatrude*, 21 S.W.3d 244, 248 (Tenn. Ct. App. 2000). In the absence of evidence warranting a deviation, the amount of the retroactive support must be set in accordance with the child support guidelines. Tenn. Code Ann. § 36-2-311(a)(11)(A) (2005).<sup>4</sup>

### III.

Ms. Smith takes issue with the juvenile court's conclusion that the referee's August 15, 1996 order was a final order. She asserts that this order did not finally resolve the custody and support disputes that existed between the parents in 1996 and that because no final order was ever entered, the juvenile court should now award her retroactive child support back to the birth of the parties' daughter in 1986. While Ms. Smith is correct that the referee's August 15, 1996 order is not a final order, it does not necessarily follow that she is entitled to child support for the time preceding the filing of her 2004 petition.

This long-simmering dispute can best be resolved by dividing Celia Bowman's childhood into four periods. The first period is from her birth on March 25, 1986 to March 29, 1990, the date of the entry of the order declaring Mr. Bowman to be Celia Bowman's father and directing him to begin paying \$344.86 in child support. The second period is from March 29, 1990 to August 15, 1996, the date of the entry of the order placing Celia Bowman in Mr. Bowman's custody and suspending his obligation to pay child support. The third period is from August 15, 1996 to March 4, 2004, the date Ms. Smith filed her petition to change custody and for child support. The fourth period is from March 4, 2004 to March 25, 2004, the date on which Celia Bowman turned eighteen.

Mr. Bowman's child support obligation for the first period was resolved with the entry of the March 29, 1990 order directing him to pay Ms. Smith \$344.86 per month. The March 29, 1990 order was final because it resolved all the claims existing between the parents at the time. Because neither party appealed from this order, it is conclusive on the parents with regard to all claims that were made or could have been made at the time. *See Richardson v. Tenn. Bd. of Dentistry*, 913 S.W.2d 446, 459-60 (Tenn. 1995); *Young v. Barrow*, 130 S.W.3d 59, 64 (Tenn. Ct. App. 2003). Thus, the March 29, 1990 order precludes Ms. Smith from filing a claim in 2004 for additional child support for this period, including the expenses related to their daughter's birth.

Mr. Bowman's child support obligation for the second period from March 29, 1990 to August 15, 1996 is less straightforward. The only indication in the record of a contemporaneous disagreement regarding support is a November 25, 1992 order in which a referee dismissed Ms. Smith's claim for "past child support" because Ms. Smith "failed to provide Mr. Bowman with a list of expenditures and receipts prior to the hearing as required for past child support under local rule 3." While the order left the door open for Ms. Smith to present this evidence to Mr. Bowman and

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<sup>4</sup>The current guidelines for setting retroactive support are provided by Tenn. Comp. R. & Regs. 1240-2-4-.06 (June 2006).

the juvenile court, the record contains no indication that she ever did. Ms. Smith's 2004 petition does not assert that Mr. Bowman failed to pay the required child support during this period or that she is somehow entitled to more support during this period than she actually received. Because Ms. Smith did not request support for this period and the record provides no basis for granting her additional support for this period, there is no basis for concluding that Mr. Bowman had any continuing obligation for child support from March 29, 1990 to August 15, 1996.

Mr. Bowman's child support obligation for the third period hinges on the legal significance of the referee's August 15, 1996 order. The juvenile court plainly erred by characterizing this order as a final order. A final order is one that resolves all the claims existing between the parties at the time, *Aetna Cas. & Sur. Co. v. Miller*, 491 S.W.2d 85, 86 (Tenn. 1973); *Wilson v. Wilson*, 58 S.W.3d 718, 725 (Tenn. Ct. App. 2001), and that leaves nothing else for the court to resolve. *In re Estate of Henderson*, 121 S.W.3d 643, 645 (Tenn. 2003); *Vineyard v. Vineyard*, 26 Tenn. App. 232, 241, 170 S.W.2d 917, 919-20 (1942). The referee's August 15, 1996 order, by its own terms, was not intended to be a final order. The order clearly envisions that further proceedings regarding custody and support would be held after the parents completed the counseling required by the court.

However, the juvenile court's mischaracterization of the August 15, 1996 order does not end the inquiry. Once that order was entered, the parties were obligated to follow it until it was modified or superseded or until they obtained some other relief from the juvenile court. *State ex rel. McAllister v. Goode*, 968 S.W.2d 834, 836-37 (Tenn. Ct. App. 1997); *Rasnic v. Wynn*, 625 S.W.2d 278, 281 (Tenn. Ct. App. 1981). Accordingly, Mr. Bowman's child support obligation during the third period was defined by the August 15, 1996 order as long as it was in force.

Ms. Smith eventually attempted to obtain relief from the August 15, 1996 child support order in her March 4, 2004 petition. That petition, however, is subject to the restriction in Tenn. Code Ann. § 36-5-101(f)(1) (2005) that "[a]ny order for child support . . . shall not be subject to modification as to any time period . . . prior to the date that an action for modification is filed and notice of the action has been mailed to the last known address of the opposing parties." Thus, by operation of law, Ms. Smith's March 4, 2004 petition did not permit the juvenile court to go back prior to March 4, 2004 to recalculate Mr. Bowman's child support obligation for the period of time when the August 15, 1996 order was in effect.

Ms. Smith argues that she should be excused from the operation of Tenn. Code Ann. § 36-5-101(f)(1) because she lacked the means to return to court to seek relief from the August 15, 1996 order until 2004. The operation of the statute, however, does not depend upon the resources available to the party seeking relief from a child support order. No arrearage in Mr. Bowman's child support accrued during this period because his obligation to pay support had been suspended by the referee. Thus, Ms. Smith's eight-year failure to return to court to seek a modification of the August 15, 1996 order places any additional child support for the third period beyond her reach.

Mr. Bowman's obligation to pay child support for the period between March 4, 2004 and March 25, 2004 is straightforward. Ms. Smith's claim for child support during this period is not limited by Tenn. Code Ann. § 36-5-101(f)(1) because the claim is seeking prospective, as opposed

to retroactive, support. Thus, if Ms. Smith presented evidence to substantiate her right to child support from and after March 4, 2004, she is entitled to receive it.

A referee determined that Celia Bowman primarily resided with Ms. Smith beginning in August 1999 and that Mr. Bowman's income during this period for the purposes of calculating child support was \$3,152 per month. Because Celia Bowman was residing with Ms. Smith on and after March 4, 2004 when Ms. Smith filed her current petition, Mr. Bowman was obligated to pay child support to Ms. Smith until the parties' daughter reached the age of majority. Celia Bowman reached the age of majority on March 25, 2004.<sup>5</sup> Therefore, Mr. Bowman is obligated to pay child support to Ms. Smith for the period from March 4 to March 25, 2004.

Based on Mr. Bowman's income, the referee determined that Mr. Bowman owed \$527 per month in child support. However, the period of time between the filing of Ms. Smith's petition and Celia Bowman's birthday is less than one month. After prorating Mr. Bowman's obligation for the period between March 4 and March 25, 2004, Mr. Bowman is required to pay Ms. Smith \$358.36.<sup>6</sup>

#### IV.

Finally, Ms. Smith requests that this court reinstate the portion of the referee's March 21, 2005 order awarding her \$3,092.50 in attorney's fees. She provides no discussion or argument in her brief regarding the basis for her request, but presumably it is premised on her belief that this court will overturn the juvenile court's May 19, 2005 order and reinstate the referee's March 21, 2005 order. This we have not done.

Attorney's fees in cases of this sort are governed by the same rules that govern attorney's fees in divorce cases. Tenn. Code Ann. § 36-2-311(c) (stating that the provisions of Title 36, Chapter 5 relating to child support shall apply to orders entered under Title 36, Chapter 2); *see also Shofner v. Shofner*, \_\_\_ S.W.3d \_\_\_, \_\_\_, 2007 WL 273646, at \*4 (Tenn. Ct. App. Jan. 30, 2007) (invoking Tenn. Code Ann. § 36-5-103(c) as a basis for awarding a father the legal expenses he incurred in defending a custody order after the mother filed a dependency and neglect petition seeking custody of the child). Thus, parents may recover reasonable attorney's fees, and the entitlement and amount of these fees is addressed to the court's discretion. Tenn. Code Ann. § 36-5-103(c) (2005); *Aaron v. Aaron*, 909 S.W.2d 408, 411 (Tenn. 1995).

Ms. Smith has been largely unsuccessful in her efforts to recover retroactive child support. Her March 4, 2004 petition has yielded a judgment for only \$358.36. In the past, this court has declined to second-guess a trial court's refusal to award either party attorney's fees when both parties

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<sup>5</sup>Neither party has presented evidence indicating that Mr. Bowman's child support obligation should have continued after Celia Bowman's eighteenth birthday because she was still in high school. *See* Tenn. Code Ann. § 34-1-102(b). Without this evidence, we have no basis for extending Mr. Bowman's child support obligation past March 25, 2004. In fact, Ms. Smith concedes in her brief that Celia Bowman was emancipated in May 2004.

<sup>6</sup>The twenty-one day period beginning March 4 through March 25, 2004 is sixty-eight percent of the month of March. Sixty-eight percent of \$527.00 equals \$358.36.

were only partially successful. *Richardson v. Spanos*, 189 S.W.3d 720, 729 (Tenn. Ct. App. 2005). Under the circumstances of this case, it would not be reasonable to award Ms. Smith attorney's fees in an amount ten times greater than the amount of support Ms. Smith herself was awarded. Accordingly, we decline to overturn the juvenile court's decision declining to award Ms. Smith her attorney's fees.

**V.**

We affirm the portion of the May 19, 2005 order dismissing Ms. Smith's petition for a change of custody. We also vacate the portion of the May 19, 2005 order dismissing Ms. Smith's petition for child support and remand the case to the juvenile court with directions to enter a judgment for Ms. Smith in the amount of \$358.36 and for whatever further proceedings consistent with this opinion may be required. We tax the costs of this appeal in equal proportions to Mozelle Smith and her surety and to Raymond Bowman for which execution, if necessary, may issue.

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WILLIAM C. KOCH, JR., P.J., M.S.